



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This is an application by the tenant for a monetary order for return of double the security deposit, and the filing fee for the claim.

On May 5, 2014, both parties appeared and this matter was adjourned to my next available date, which was July 3, 2014.

On May 5, 2014, an interim decision was made, which should be read in conjunction with this decision. A copy of the interim decision and Notice of Reconvene Hearing were sent to both parties by the Residential Tenancy Branch on May 13, 2014.

On July 3, 2014, the tenant appeared. The landlords did not attend.

The tenant appeared, gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The tenant stated that he complied with the interim decision of May 5, 2014 and reserved the landlords with their evidence package on May 6, 2014, which the Canada post track history indicated it was received by the landlord on May 7, 2014. Filed in evidence is a copy of the Canada post track history.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenant paid a security deposit of \$1,100.00 at the start of the tenancy, which commenced on December 1, 2012. The tenant stated he vacated the rental premises on December 21, 2013.

The tenant stated on December 31, 2013, he sent his forwarding address to the landlord by registered mail. The tenant stated the Canada post track history shows the landlord ND, accepted the registered mail on January 2, 2014. Filed in evidence is a copy of the Canada post tracking history dated January 3, 2014, which support the tenant's position.

The tenant stated the landlord did not make an application for dispute resolution claiming against the security deposit and has not returned their security deposit.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

There was no evidence to show that the tenant had agreed, in writing, that the landlord could retain any portion of the security deposit.

There was also no evidence to show that the landlord had applied for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the tenant, to retain a portion of the security deposit.

The landlord has breached section 38 of the Act. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

The security deposit is held in trust for the tenant by the landlord. At no time does the landlord have the ability to simply keep the security deposit because they feel they are entitled to it or are justified to keep it.

The landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator. Here the landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlords pay the tenant the sum of **\$2,250.00**, comprised of double the security deposit on the original amounts held (\$1,100.00), and the \$50.00 fee for filing this Application.

The tenant is given a formal order in the above terms and the landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 03, 2014

Residential Tenancy Branch

